

TERMINATION OF CONTRACTOR WHEN TIME IS OF THE ESSENCE IN CONSTRUCTION

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**TERMINATION WHEN TIME OF THE ESSENCE IN
CONSTRUCTION**

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*To my beloved parent, wife and my family members
for their endless love, care and support.....*

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ABSTRACT

The phrase 'Time is of the essence' in a contract shows that time for performance is an essential condition of the contract. If a party fails to perform his obligation timely as stipulated the other party may either treat the contract as repudiated or terminate the contract. Construction contracts normally contain dates for commencement and completion that make time is of the essence of the contracts. In addition they also contain extension of time and liquidated damages clauses. The issue is then whether or not the employers may terminate the contracts in the event that the contractors fail to complete their works within the time stipulated. The methodology adopted in this research is case law based. There is no limitation as for the court cases referred to in terms of type of projects as long as they relate to contractor's breach of time for performance and the employer's right to terminate the contract. The cases were extracted from the Malayan Law Journal using the Lexi-Nexis database. Six related cases were shortlisted and analysed. The findings show that an employer may validly terminate the contract if he can show that time remains the essence of the contract at the time the termination is exercised and he complies with the conditions and procedures as stipulated in the contract.